IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 9906 of 2004

Between:

R. Sreedevi W/o S. Ramaiah
R/o D.No. 15/29, Nagireddipalle, H/o Settipalle Sambepalle Mandal,
Kadapa District

..... PETITIONER

AND

1 The Revenue Divisional Officer, Kadapa District
2 The Mandal Revenue Officer, MRO Office, Sambepalle, Kadapa District
3 M. Rajendra Prasad Mandal Revenue Inspector,
MRO., Office, Sambepalle, Kadapa District

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a direction or an order, or a Writ more particulalry one in the nature of Writ of Mandamus, declaring the proceedings issued by the 1st respondent vide Ref.C/265/2004, dt 7-6-2004 and suspending the licence bearing No. 5/2000 of Sambepalle Mandal, Kadapa District of the petitioner is illegal, arbitrary, ultra-vires, without sanction or authority of law and consequently set-aside the impugned order

Counsel for the Petitioner:MR.S.S.BHATT

Counsel for the Respondent No.1 and 2: GP FOR CIVIL SUPPLIES

Counsel for the third respondent: Mr.Lokesh Reddy Jalla

The Court made the following :

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Order:-

The petitioner is a dealer of Fair Price Shop situated at Nagireddygaripalle, Sambepalli; Mandal, Cuddapah District. Pending enquiry, under Section 6-A under Essential Commodities Act , herein after called the Act,before the Joint Collector, Cuddapah, the Revenue Divisional Officer, Cuddapah suspended the F,P,Shop licence of the petitioner. Questioning the order of the first respondent, writ petitioner filed this writ petition alleging that the allegations made against the petitioner in the impugned order is incorrect as the petitioner has not lifted the disputed quantity of 187.50 Qtls. of rice said to have been allotted and delivered through the vehicle bearing A.P. 10 T 1990 from M.L.S.Point, Rayachoti to the shop of the petitioner in respect of work relating to Settipalli to Yerramorapalli village road of Sambepalli mandal . Further, the allegations made in the impugned suspension order is that an inspection was made by the M.R.O, Sambepalle and Vigilance Enforcement Staff, Tirupati in the petitioner's shop on 21-5-2004 at 10-30 A.M. and seized one bag containing 50 Kgs.rice, one bag containing 40 Kgs. of rice and one bag containing 20 Kgs.of rice and 253 empty gunny bags as against the quantity of 187-50Qtls. of rice alleged to have been delivered through the vehicle AP 10 T 1990 found without records, licence and authorization. That the impugned order does not state specifically a s regards the irregularities committed by the petitioner that she has lifted 187-50Qtls. of rice allotted for the Food for Work Programme and did not maintain records showing the use of the said quantity. Specific allegations are made in para 7 of the writ affidavit that the local Revenue Inspector will have to come to the

M.L.S.point and counter- sign on the release order and see that the rice is given/delivered to the F.P. Shop Dealer for Distribution. Further, the Revenue Inspector has to sign the stock register a t the F.P.Shop to release the rice to the coupon holders after rice is unloaded at the Fair Price Shop. But in the instant case R.I. without the knowledge of the petitioner, lifted the stock of 187.50 qtls. of rice from M.L.S..Point to an unknown destination with the connivance of the contractor, Sri Y.Harinath Reddy. There is no entry made by the Revenue Inspector in the stock register after lifting of the stock from the M.L.S.point to the F.P.shop at Nagireddygaripalle. The R.I forged her signatures and lifted the stock. It is the duty of third respondent to counter sign the release order and see that the rice is delivered to the particular fair price shop dealer and also sign in the stock register maintained by the dealer showing the date and the quantity of rice delivered. In the instant case, the petitioner has not taken any delivery of the said rice and the petitioner has not delivered any rice to the coupon holders. But the Mandal Revenue Inspector, the third respondent herein, without the knowledge of the Fair Price Shop Dealer lifted the stock of 187-50Qtls. of rice from M.L.S. point to an unknown destination with the connivance of the contractor, Harinath. There is no entry by the Revenue Inspector in the Stock Register after lifting the stock from the fair price shop of the petitioner and the third respondent has forged the signatures of the petitioner. It is further stated that the third respondent in order to save his skin he has shown the shop of the petitioner as if the said stock was lifted by the petitioner and as per the impugned order the said stock was transported by the vehicle AP10 T 1990 But on enquiry it revealed that the vehicle is a passenger bus belonging to APSRTC. In fact stocks are to be transported by the Government lorry in A.P/04U-2718. It is further alleged that the so-called rice meant for food for work scheme is not an irregularity falling under the Act and therefore no action can be taken under Section 6-A of the Act as it does not fall under the category of essential commodity attracting the provisions of the Essential Commodities Act. and the control orders made under the Act.

A counter has been filed by the first and second respondents stating that when the Mandal Revenue Officer inspected the shop of the petitioner, he has noticed certain irregularities and seized the rice etc. under cover of panchanama and a report was sent to the Joint Collector for further enquiry under Section 6-A of the Essential Commodities Act and the Joint Collector took up the case on file and passed the impugned order suspending the licence of the petitioner’s shop.

With regard to the allegations made against the third respondent, the third respondent submitted that the petitioner authorized her husband ,S.Ramaiah, to maintain the fair price shop in question. On 6-5-2004 the Petitioner's husband lifted the stock of 187.50 Qtls. of rice meant for Food for work programme from M.L.S. point, Rayachoti as per release order issued by the M.R.O.Sambapalle . The husband of the petitioner also affixed his signature in the goods movement register maintained by the M.L.S. point in token of having received the stock of rice and transported the same alongwith Mandal Revenue Inspector through lorry bearing No.AP 10T 1990 to the petitioner's shop and the husband of the petitioner also affixed his signature in token of rice received. The Mandal Revenue Inspector effected necessary entries in the Stock register maintained in the fair price shop having taken delivery of rice and released the stock under coupons to the Labour worked under Food for work. But the petitioner has not produced any accounts while inspecting the stock by the Investigating Officer on 21-5-2004. The rice stock kept in the F.P. shop on 6-5-2004 was also not available in the F.P. shop during the course of inspection. Hence the F.P. shop dealer; violated the Control Orders under the A.P.S.C.(RDCS) Order, 2001 and E.C.Act, 1955 . It is further stated that on 3-3-2004 the shop of the petitioner

accommodated 195 Qtls. of rice. So the stocking of 187.50 Qtls. of rice in the shop is easily possible. The transported vehicle AP 10 T 1990 is a heavy goods vehicle in which rice was supplied to the petitioner.

Admittedly, pending enquiry, authorisation of the shop was suspended by the revenue authorities. Therefore, it is not for the Court to consider the allegations made by the writ petitioner and counter allegations made by the respondents 1 and 2 and also the serious allegations made by the writ petitioner against the third respondent. A Division Bench of this Court in Writ Appeal No. 1893 of 2005 dated 31-01-2005 held that it may not be proper for this Court to suspend the effect of the order of suspension, which is not permissible in law. There cannot be any suspension of an order of suspension thereby setting at naught the very order of suspension. At the most, there could be a direction to dispose of the proceedings or the appeal expeditiously but not to suspend the order of suspension

Having regard to the facts of the case, I am of the opinion that suspension pending

enquiry is incidental and ancillary to the power of cancellation. In view of the allegations made against the petitioner it may not be just and proper for this Court to suspend this order. Accordingly, I do not see any extra-ordinary circumstances to suspend the said order..

Serious allegations were made by the petitioner against the third respondent. So the Joint Collector is directed to conduct an enquiry under Section 6-A of the Essential Commodities Act and consider the allegations made

by the petitioner by conducting a detailed enquiry after giving an opportunity to the petitioner and the third respondent and pass appropriate orders within six

weeks from the date of the receipt of order. W.P. is accordingly dismissed. No order as to costs.

(Justice V.Eswaraiah)

March 29th, 2005

Tsvk.

Copy tobe furnished within one week.

By order

To

1)The Revenue Divisional Officer, Kadapa , Kadapa District.

2,The Mandal Revenue Officer, M.R.O.Office, Sambepalle, Kadapa district.

3.M.lRajendra Prasad son of Knot known, Mandal Revenue

Inspector,M.R.O.Office, Sambepalle, Kadapadistrict.

4) 1 CC to MR.S.S.BHATT

5) 1 CC to MR.LOKESH REDDY JALLA

6) Ccfor G.P.for Revenue,High Court Buildings, Hyderabad

on usual terms.

7) **2 CD copies**